IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.5396 OF 1997
WITH
WRIT PETITION NO.5744 OF 1997
WITH
WRIT PETITION NO.5745 OF 1997

W.P.NO.5396 OF 1997

Shri Atmaram Sitaram Mane,)
age-Adult, Occ.Agriculturist,)
R/o.Katali, Tal.Gagambawada,)
Dist. Kolhapur.).. Petitioner

Vs.

1. State of Maharashtra,)
Through the Secretary,)
Revenue and Forests Dept.,)
Mantralaya, Mumbai-400 032.)

2. Divisional Commissioner,)
Pune Division Pune.)

3. Special Land Acquisition)
Officer No.12, Kolhapur.).. Respondents
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Shri N.V.Bandiwadekar for the petitioner.

Shri V.S.Gokhale, AGP for respondents.
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W.P.NO.5744 OF 1997

Shri Parsu Bapu Mane,)
aged-Adult, Occ. Agriculturist,)
R/o.Katali, Tal.Gagambawada,)
Dist. Kolhapur.).. Petitioner.

Vs.

1. State of Maharashtra,)
Through the Secretary,)
Revenue and Forests Dept.,)
Mantralaya, Mumbai-400 032.)

2. Divisional Commissioner,)
Pune Division Pune.)

3. Special Land Acquisition)
Officer No.12, Kolhapur.).. Respondents
--

Shri N.V.Bandiwadekar for the petitioner.

Shri V.S.Gokhale, AGP for respondents.
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W.P.NO.5745 OF 1997

Shri Sakharam Gangaram Bandagale,)
deceased by his legal heir;)
Shri Mahadeo Sakharam Bandagale)
Manager of H.U.F.,)
since deceased by legal heirs:)

1. Smt.Chandrabai Mahadeo Bandagale,)
age 67 years, Occ:Housewife.)

2. Shri Ramchandra Mahadeo Bandagale)
age 42 years, Occ: Agriculture,)

3. Shri Laxman Mahadeo Bandagale,)
age 32 years, Occ:Agriculture,)

4. Shri Lahu Mahadeo Bandagale,)
age 27 years, Occ; Agriculture,)

5. Mrs.Mangala Manohar Varekar,)
age 32 years, Occ:Housewife,)

6. Shri Shankar Sakharam Bandagale,)
age 47 years, Occ:Agriculture,)

7. Shri Dinkar Sakharam Bandagale,)
age 45 years,)

All r/o. at Village Asalaj,)
Taluka - Ganganbawda,)
Dist. Kolhapur.).Petitioners

Vs.

1. State of Maharashtra,)
Through the Secretary,)
Revenue and Forests Dept.,)
Mantralaya, Mumbai-400 032.)

2. Divisional Commissioner,)
Pune Division Pune.)

3. Special Land Acquisition)
Officer No.12, Kolhapur.).. Respondents
--

Shri N.V.Bandiwadekar for the petitioners.

Shri V.S.Gokhale, AGP for respondents.
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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 19TH OCTOBER, 2005.

ORAL JUDGMENT: (PER R.M.S.KHANDEPARKAR, J)

1. Since common questions of law and facts arise in all these petitions, they were heard together and are being disposed of by this common judgment.

2. In all these petitions, the petitioners challenge the land acquisition proceedings on two grounds. Firstly that the petitioners were not given

personal hearing in the course of the inquiry under Section 5A of the Land Acquisition Act, 1894, hereinafter called as "the said Act", inspite of the written objections by the petitioners consequent to the publication of notification and service of the copy of the notice under Section 4 of the said Act, and secondly that considering the fact that the notification under Section 11 of the Maharashtra Resettlement of Project Displaced Persons Act, 1976, hereinafter called as "the Resettlement Act," was published much prior to the enforcement of Maharashtra Project Affected Persons Rehabilitation Act, 1986, hereinafter called as "the Rehabilitation Act, and the ceiling limit which was available under the Schedule A, Part II of the Resettlement Act was 8 acres and therefore, there was no occasion for the authorities to acquire the land of the petitioners as the petitioners' land was within the ceiling limit on deduction of the area of uncultivable land.

3. Few facts relevant for the decision are that the notification under Section 11 of the Resettlement Act in relation to the village Katali was issued on 14th February, 1983. The Resettlement Act was repealed by the Rehabilitation Act, which came into force from 23rd October, 1989. The notification under

Section 4(1) of the said Act in relation to the various agricultural lands in the village Katali including the lands of the petitioners was issued on 31st October, 1994 and was published in the Government Gazette on 24th November, 1994 and in the local newspaper on 17th November, 1994 and was displayed at Chavadi in the village on 19th December, 1994. The personal notices were issued under the said Section 4(1) to the petitioners on 19th January, 1995. The petitioners filed their objections on 7th March, 1995. A declaration under Section 6 of the said Act came to be issued on 15th December, 1995 and was published in the Government Gazette on 16th December, 1995 in the local newspaper on 17th April, 1996 and displayed at Chavadi on 2nd May, 1996. The award under Section 11 of the said act was declared on 18th May, 1997 and the individual notices under Section 12(2) thereof were issued on 29th September, 1997 which came to be received by the petitioners on 3rd October, 1997. The petitioners filed applications for certified copies of the award on 7th October, 1997 and the same were supplied to the petitioners on 15th October, 1997, thereafter the present petitions were filed.

4. While assailing the impugned award and the land acquisition proceedings, the learned advocate for

the petitioners placing reliance in the decision of the Division Bench of this Court in **Khushalrao Tulshiramji Pandao & Ors. v. State of Maharashtra & Ors.,** reported in 2001(4) Mh.L.J. 510 submitted that it was obligatory for the Collector/Land Acquisition Officer to give opportunity of being heard to the petitioners, as they had filed the objections to the proceedings consequent to the publication of the Notification under Section 4 of the said Act before submitting the report about the inquiry under Section 5A of the said Act and having not done so, the proceedings stand vitiated. In terms of the Resettlement Act, the slab limit prescribed under Schedule A Part II was 8 acres and the notification under Section 11 of the Resettlement Act was issued on 14th February, 1983 in relation to the village Katali. The land of the petitioners which is sought to be acquired is from the said village Katali. The acquisition is for the resettlement of Kumbhi Medium Project Affected Persons. Merely because the notification under Section 4 of the said Act was issued in the year 1994, after enforcement of the Rehabilitation Act, the right accrued under the Resettlement Act in favour of the petitioners would not be affected in any manner, and therefore, taking into consideration the fact that the petitioners' land

consisted of uncultivable land along with the cultivable land and on exclusion of uncultivable land from the total area of land of the petitioners, it would have fallen short of the limit prescribed under the Resettlement Act, it could not have been subjected to acquisition for the said purpose.

5. On the other hand, the learned advocate appearing for the Government submitted that the petitioners had filed the written objections beyond the period of limitation prescribed for the same and only during the hearing of the inquiry under Section 5A, and therefore, there was no question of giving personal hearing as such to the petitioners in relation to the said inquiry. Besides, consequent to the filing of such written submissions, the authority had inspected the site in order to deal with the objections sought to be raised on behalf of the petitioners. He further submitted that the provisions of the Resettlement Act would not be of any help to the petitioners to get the award set aside in the matter.

6. As regards the first point sought to be raised in the matter, it is seen that undisputedly, the notification under Section 4 was published on 24th

November, 1994 in the Government Gazette. It was followed by a personal notice to the petitioners on 19th January, 1995. Undisputedly, the petitioners did not file any objection in writing within a period of 30 days either from the date of publication of the notification or from the service of the personal notice on the petitioners. The written objections were filed as late as on 7th March, 1995, much after the expiry of period of 30 days from the date of service of personal notice on the petitioners. Section 5A(1) clearly requires that the objections should be filed within 30 days from the date of publication of the notice and only those persons who have filed the objections within 30 days are required to be given opportunity of being heard in the matter by the Collector in the course of inquiry under Section 5A. The decision in **Khushalrao Tulshiramji Pandao's case (supra)** does not deal with this issue and therefore is of no help to the petitioners. This Court in unreported decision between **Brahmin Sahayak Sangh v. The State of Maharashtra and Others,** in Writ Petition No.2713 of 1994 delivered on 26th September, 2005 has already held that it is only in respect of those persons who had filed the objections in writing within the period prescribed under Sub-section (1) of Section 5A of the said Act, that there would be an

obligation upon the Collector to give them an opportunity of being heard in the matter and not to other persons who have filed objections beyond the period of limitation, and as a matter of right they cannot insist for opportunity of being heard in the matter. Undisputedly, there is no specific bar for the concerned authorities to take into consideration such objections in case the objections contain any material worth considering. But refusal to consider such objections would not create any right in favour of the objectors nor it would vitiate the acquisition proceedings. Hence, the first ground of challenge to the acquisition proceedings, in the facts and circumstances of the case, is to be held as devoid of substance.

7. As regards the second ground of challenge, undoubtedly, the limit prescribed under Schedule A Part II of the Resettlement Act was 8 acres of land which was required to be excluded from the acquisition proceedings, However, the Resettlement Act was repealed by the said Rehabilitation Act. The limit prescribed for exclusion from acquisition proceedings under the Schedule, Part II of the Rehabilitation Act is 1 H and 61 Ares which is about 4 Acres. It is not in dispute that this limit has been duly considered by

the authority in the case in hand. The contention is that if the limit was considered as prescribed under the Resettlement Act, after exclusion of uncultivable land of the petitioners, there would have been no occasion for the authorities to initiate the proceedings for acquisition of land of the petitioners as it would have been below the limit of 8 acres. However, it is not the case of the petitioners that it would fall below the ceiling limit of 4 acres. Once it is apparent that the saving clause under Section 26 of the Rehabilitation Act does not save the limits which were under the Resettlement Act in relation to the lands situated in the villages in respect of which the notification under Section 11 was already issued under the Resettlement Act, merely because in the case in hand the notice under Section 11 was issued under Resettlement Act in the year 1983 though the acquisition proceedings were commenced after enforcement of the Rehabilitation Act, that would not enure to the benefits of the petitioners to contend that the limit to be considered in relation to the petitioners' land would be in accordance with the Resettlement Act. The limit will have to be considered as on the date of issuance of notification under Section 4 of the said Act. The notification under Section 11 of the Resettlement Act was merely to

declare the applicability of the provisions of the Resettlement Act to the specified project and the area likely to be affected or benefited zone. Publication of such notification does not create any right for exclusion of any particular acreage of land from the acquisition proceedings. Such right could have perhaps accrued, had the land acquisition proceedings commenced prior to enforcement of Rehabilitation Act. The limit prescribed under the Resettlement Act is undisputedly modified under the Rehabilitation Act and when the action for acquisition under Section 11 was sought to be taken, the provisions of Rehabilitation Act were already in force. Hence, the limit would be in terms of the Schedule under the Rehabilitation Act. It is well settled law that mere right to claim or to take advantage of a statutory provision without any act done by the party towards availing or exercising that right, it cannot be said to be a "right accrued" under the statute (Vide **Sakharam alias Bapusaheb Narayan Sanas & Anr. v. Manikchand Motichand Shah & Ors.,** reported in AIR 1963 SC 354). Occasion to avail or exercise right for exclusion of certain area from the acquisition proceedings would arise only after the notification under Section 4 of the said Act is published and not earlier thereto. Being so, there is no substance in the second ground of challenge in

the petitions.

8. Undoubtedly, in terms of Section 16(4) of Resettlement Act, the government could, for the purpose of resettlement of displaced persons on land, acquire land as far as practicable, according to the provisions of Part II of Schedule A to the Resettlement Act and accordingly 8 acres of land was excluded from such acquisition under the said Schedule. Obviously, therefore, the provisions of law required the government to exclude an area of 8 acres of land in case of acquisition of land for resettlement of displaced persons. But with the repeal of Resettlement Act, new statutory provisions for the same purpose are brought into force with the limit of exclusion of land from acquisition being reduced to 4 acres. Now, the provisions of Section 16(4) of Resettlement Act come into force only at the time of acquisition of land. As there were no acquisition proceedings initiated during the time the Resettlement Act was in force, no right had accrued in favour of the petitioner for the exclusion of any particular area of land from the acquisition proceedings.

9. Mere right to take advantage of provisions of

the statute repealed is not a right accrued within the meaning of the said expression under Section 6 of General Clauses Act. The right to exclude certain area from the acquisition proceedings accrued on the date of issuance of notification under Section 4 of the said Act and not prior to that day. On the day of publication of notification under Section 4 of the said Act the exclusion limit was 4 acres and not 8 acres.

10. As no other ground of challenge is canvassed, the petitions fail and are hereby dismissed. Rule in the above writ petitions stands discharged with no order as to costs. Interim reliefs stand vacated.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)